



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor

ACTION: Notice

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210, ebsa.opr@dol.gov, (202) 693-8410, FAX (202) 219-4745 (these are not toll-free numbers).

I. SUPPLEMENTARY INFORMATION:

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor

Title: ERISA Procedure 76-1 Advisory Opinion Procedure

Type of Review: Extension of a currently approved information collection

OMB Number: 1210-0066

Affected Public: Businesses or other for-profits.

Respondents: 29

Responses: 29

Estimated Total Burden Hours: 299

Estimated Total Burden Cost (Operating and Maintenance): \$731,000

Description: Under ERISA, the Department has responsibility to administer the reporting, disclosure, fiduciary and other standards for pension and welfare benefit plans. In 1976, the Department issued ERISA Procedure 76-1, Procedure for ERISA Advisory Opinions (ERISA Procedure), in order to establish a public process for requesting guidance from EBSA on the application of ERISA to particular circumstances. The ERISA Procedure sets forth specific administrative procedures for requesting either an advisory opinion or an information letter and describes the types of questions that may be submitted. As part of the ERISA Procedure, requesters are instructed to provide information to EBSA concerning the circumstances governing their request. EBSA relies on the information provided by the requester to analyze the issue presented and provide guidance. The ERISA Procedure has been in use since 1976, and the Department has issued hundreds of advisory opinions and information letters under its rules. The ICR was approved by OMB under OMB Control Number 1210-0066 and is scheduled to expire on August 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: ERISA Technical Release 91-1

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0084

Affected Public: Businesses or other for-profits

Respondents: 10

Responses: 80,015

Estimated Total Burden Hours: 1,668

Estimated Total Burden Cost (Operating and Maintenance): \$26,898

Description: The information collection requirements arise from ERISA section 101(e), which establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986.

The notice requirements of section 101(e) are two-fold. First, subsection (e)(1) requires plan administrators to provide advance written notification of such transfers to participants and beneficiaries. Second, subsection (e)(2)(A) requires employers to provide advance written notification of such transfers to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least 60 days before the transfer date. The two subsections prescribe the information to be included in each type of notice and further give the Secretary of Labor the authority to prescribe how notice to participants and beneficiaries must be given and any additional reporting requirements deemed necessary.

Although the Department of Labor has not issued regulations under section 101(e), on May 8, 1991, the Department published ERISA Technical Release 91-1, to provide guidance on how to satisfy the notice requirements prescribed by this section. The Technical Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. Second, it simplified the statutory filing requirements by providing that filing with the Department of Labor would be deemed sufficient notice to both the Department and the Department of the Treasury as required under the statute. The ICR was approved by OMB under OMB Control Number 1210-0084 and is scheduled to expire on August 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Disclosures by Insurers to General Account Policyholders

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0114

Affected Public: Businesses or other for-profits

Respondents: 32,000

Responses: 32,000

Estimated Total Burden Hours: 135,000

Estimated Total Burden Cost (Operating and Maintenance): \$12,000

Description: Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188) (SBJPA) amended added a new section 401(c) to the Employee Retirement Income Security Act of 1974 (ERISA). This new section, inter alia, required the

Department to promulgate a regulation providing guidance, applicable only to insurance policies issued on or before December 31, 1998, to or for the benefit of employee benefit plans, to clarify the extent to which assets held in an insurer's general account under such contracts are “plan assets” within the meaning of the ERISA, because the policies are not “guaranteed benefit policies” within the meaning of section 401(b) of ERISA. SBJPA further directed the Department to set standards for how insurers should manage the specified insurance policies (called Transition Policies). Pursuant to the authority and direction given under SBJPA, the Department promulgated a final regulation on January 5, 2000 (65 FR 714), which is codified at 29 CFR 2550.401c-1. This regulation has not been amended subsequently. The ICR was approved by OMB under OMB Control Number 1210-0114 and is scheduled to expire on August 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Employee Retirement Income Security Act Blackout Period Notice

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0122

Affected Public: Businesses or other for-profits

Respondents: 44,000

Responses: 6,400,000

Estimated Total Burden Hours: 198,000

Estimated Total Burden Cost (Operating and Maintenance): \$2,100,000

Description: The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, added ERISA section 101(i), which requires individual account pension plans to furnish a written notice

to participants and beneficiaries in advance of any “blackout period” during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. Under 306(b)(2) of SOA, the Secretary of Labor was directed to issue interim final rules necessary to implement the SOA amendments. The Department's regulation for this purpose is codified at 29 CFR 2520.101-3. The ICR was approved by OMB under OMB Control Number 1210-0122 and is scheduled to expire on August 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Annual Information Return/Report of Employee Benefit Plan

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0110

Affected Public: Businesses or other for-profits

Respondents: 838,575

Responses: 838,575

Estimated Total Burden Hours: 586,765

Estimated Total Burden Cost (Operating and Maintenance): 257,414,600

Description: Under Titles I and IV of ERISA, and the Internal Revenue Code, as amended (Code), pension and other employee benefit plans generally are required to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. Filing the Form 5500, “Annual Return/Report of Employee Benefit Plan,” together with any required attachments and schedules (Form 5500 Annual Return/Report) through the ERISA Filing Acceptance System 2 (EFAST2) generally

satisfies these annual reporting requirements. The Form 5500 Annual Return/Report is the primary source of information concerning the operation, funding, assets, and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 Annual Return/Report is a compliance and research tool for the Department of Labor (Department), Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (collectively, the Agencies) and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The ICR was approved by OMB under OMB Control Number 1210-0110 and is scheduled to expire on August 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Registration for EFAST-2 Credentials

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0117

Affected Public: Businesses or other for-profits

Respondents: 305,000

Responses: 305,000

Estimated Total Burden Hours: 101,667

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description: ERISA Section 104 requires administrators of pension and welfare benefit plans (collectively, employee benefit plans), and employers sponsoring certain fringe benefit plans and other plans of deferred compensation, to file returns/reports annually

with the Secretary of Labor (the Secretary) concerning the financial condition and operation of the plans. Reporting requirements are satisfied by filing the Form 5500 in accordance with its instructions and the related regulations. Beginning with plan year filings for 1999, Form 5500 filings were processed under the ERISA Filing Acceptance System (EFAST), which was designed to simplify and expedite the receipt and processing of the Form 5500 by relying on computer scannable forms and electronic filing technologies.

Beginning with plan year filings for 2009, Form 5500 filings are processed under a new system, the ERISA Filing Acceptance System 2 (EFAST-2), which is designed to simplify and expedite the receipt and processing of the Form 5500 by relying on Internet-based forms and electronic filing technologies. In order to file electronically, employee benefit plan filing authors, schedule authors, filing signers, Form 5500 transmitters, and entities developing software to complete and/or transmit the Form 5500 are required to register for EFAST-2 credentials through the EFAST-2 Web site. Requested information includes: Applicant type (filing author, filing signer, schedule author, transmitter, or software developer); mailing address; fax number (optional); email address; company name, contact person; and daytime telephone number. Registrants must also provide an answer to a challenge question (“What is your date of birth?” or “Where is your place of birth?”), which enables users to retrieve forgotten credentials. In addition, registrants must accept a Privacy Agreement; PIN Agreement; and, under penalty of perjury, a Signature Agreement. The ICR was approved by OMB under OMB Control Number 1210-0117 and is scheduled to expire on September 30, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: PTE 1990-1; Insurance Company Pooled Separate Accounts

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0083

Affected Public: Businesses or other for-profits

Respondents: 96

Responses: 960

Estimated Total Burden Hours: 160

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description: PTE 90-1 provides an exemption from certain provisions of ERISA relating to transactions involving insurance company pooled separate accounts in which employee benefit plans participate. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code might prohibit a party in interest to a plan from furnishing goods or services to an insurance company pooled separate account in which the plan has an interest, or prohibit engaging in other transactions. Under the exemption, persons who are parties in interest to a plan that invests in a pooled separate account, such as a service provider, may engage in otherwise prohibited transactions with the separate account if the plan's participation in the separate account does not exceed specified limits and other conditions are met. These other conditions include a requirement that the party in interest not be the insurance company, or an affiliate thereof, that holds the plan assets in its pooled separate account or other separate account. The terms of the transaction to which the exemption is applied must be

at least as favorable to the pooled separate account as those that would be obtained in a separate arms-length transaction with an unrelated party, and the insurance company must maintain records of any transaction to which the exemption applies for a period of six years. This ICR covers this recordkeeping requirement. The ICR was approved by OMB under OMB Control Number 1210-0083 and is scheduled to expire on December 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Settlement Agreements Between a Plan and a Party in Interest

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0091

Affected Public: Businesses or other for-profits

Respondents: 6

Responses: 1,620

Estimated Total Burden Hours: 42

Estimated Total Burden Cost (Operating and Maintenance): \$542

Description: Section 408(a) of ERISA and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) give the Secretary of Labor the authority to grant an exemption to a class or order of fiduciaries, disqualified persons, or transactions from all or part of the restrictions imposed by sections 406 and 407(a) of ERISA and from the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. This information collection request (ICR) relates to two prohibited transaction class exemptions (PTEs) that the Department of Labor (the Department) has granted,

both of which involve settlement agreements. These two exemptions are described below:

PTE 94-71. Granted on September 30, 1994, PTE 94-71 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, a transaction or activity that is authorized, prior to the execution of the transaction or activity, by a settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department.

PTE 2003-39. Granted on December 31, 2005, PTE 03-39 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, transactions arising out of the settlement of litigation that involve the release of claims against parties in interest in exchange for payment by or on behalf of the party in interest, provided that certain conditions are met.

Because both exemptions involve settlement agreements, the Department has combined their information collection provisions into one ICR and has obtained OMB approval for their paperwork burden. The Department believes that the public and the Federal government are both best served by allowing the public to review and comment on similar exemption provisions in combination. The ICR was approved by OMB under OMB Control Number 1210-0091 and is scheduled to expire on December 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (PTCE 2002-12).

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0115

Affected Public: Businesses or other for-profits

Respondents: 60

Responses: 840

Estimated Total Burden Hours: 855

Estimated Total Burden Cost (Operating and Maintenance): \$800

Description: PTE 2002-12 exempts certain transactions that would be prohibited under ERISA and the Federal Employees' Retirement System Act (FERSA), and provides relief from certain sanctions of the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among Index and Model-Driven Funds (Funds) managed by managers (Managers), and among such Funds and certain large accounts (Large Accounts) that engage such Managers to carry out a specific portfolio restructuring program or to otherwise act as a “trading adviser” for such a program. By removing existing barriers to these types of transactions, the exemption increases the incidences of cross-trading, thereby lowering the transaction costs to plans in a number of ways from what they would be otherwise.

In order for the Department to grant an exemption for a transaction or class of transactions that would otherwise be prohibited under ERISA, the statute requires the Department to make a finding that the exemption is administratively feasible, in the

interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. To ensure that Managers have complied with the requirements of the exemption, the Department has included in the exemption certain recordkeeping and disclosure obligations that are designed to safeguard plan assets by periodically providing information to plan fiduciaries, who generally must be independent from the cross-trading program. Initially, where plans are not invested in Funds, Managers must furnish information to plan fiduciaries about the cross-trading program, provide a statement that the Manager will have a potentially conflicting division of loyalties, and obtain written authorization from a plan fiduciary for a plan to participate in a cross-trading program. For plans that are currently invested in Funds, the Manager must provide annual notices to update the plan fiduciary and provide the plan with an opportunity to withdraw from the program. For Large Accounts, prior to the cross-trade, the Manager must provide information about the cross-trading program and obtain written authorization from the fiduciary of a Large Account to engage in cross-trading in connection with a portfolio restructuring program. Following completion of the Large Account's restructuring, information must be provided by the Manager about all cross-trades executed in connection with a portfolio-restructuring program. Finally, the exemption requires that Managers maintain for a period of 6 years from the date of each cross-trade the records necessary to enable plan fiduciaries and certain other persons specified in the exemption (*e.g.*, Department representatives or contributing employers), to determine whether the conditions of the exemption have been met.

The ICR was approved by OMB under OMB Control Number 1210-0113 and is scheduled to expire on December 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Voluntary Fiduciary Correction Program

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0118

Affected Public: Businesses or other for-profits

Respondents: 1,800

Responses: 50,700

Estimated Total Burden Hours: 8,100

Estimated Total Burden Cost (Operating and Maintenance): \$329,200

Description: This information collection arises from two related actions: the Voluntary Fiduciary Correction Program (the VFC Program or the Program) and Prohibited Transaction Class Exemption (PTE) 2002-51 (the Exemption). The Department adopted the Program and the Exemption in order to encourage members of the public to voluntarily correct transactions that violate (or are suspected of violating) the fiduciary or prohibited transaction provisions of the ERISA. Both the Program and the Exemption incorporate information collection requirements in order to protect participants and beneficiaries and enable the Department to oversee the appropriate use of the Program and the Exemption. The ICR was approved by OMB under OMB Control Number 1210-0118 and is scheduled to expire on December 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Acquisition and Sale of Trust Real Estate Investment Trust Shares by Individual Account Plans Sponsored by Trust Real Estate Investment Trusts

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0124

Affected Public: Businesses or other for-profits

Respondents: 52

Responses: 109,200

Estimated Total Burden Hours: 5,469

Estimated Total Burden Cost (Operating and Maintenance): \$346,000

Description: PTE 2004-07 exempts from certain prohibited transaction restrictions of ERISA and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code), the acquisition, holding, sale, and contribution in kind of publicly traded shares of beneficial interest in a real estate investment trust that is structured under State law as a business trust (Trust REIT), on behalf of and to individual account plans sponsored by the REIT or its affiliates, provided that certain conditions are met.

The exemption allows individual account plans (Plans) established by Trust REITS to offer a beneficial interest in the Trust REIT in the form of Qualifying REIT Shares, as defined in the exemption, to participants in Plans sponsored by the REIT or its employer affiliates, to require that employer contributions be used to purchase such shares, and to permit “contributions in kind” of such shares to these Plans by employers.

The exemption conditions relief on compliance with a number of information collection requirements. These information collections are to be provided or made available to plan

participants and fiduciaries in order to inform them about investments in Qualifying REIT Shares and the conditions of the exemption permitting share transactions. Records sufficient to allow them to determine whether the exemption conditions are met must also be maintained, and made available to them upon request, for a period of six years. These records must also be made available on request to employers and employee organizations with employees and members covered by a Plan of the Trust REIT or one of its employer affiliates, and to authorized employees and representatives of the Department and the Internal Revenue Service. EBSA submitted an ICR for the information collections in PTE 2004-07 to the Office of Management and Budget (OMB) for review and clearance in connection with proposal of the class exemption, which was published in the Federal Register on June 3, 2003 (68 FR 33185). The ICR was approved by OMB under OMB Control Number 1210-0124 and is scheduled to expire on December 31, 2018.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Abandoned Individual Account Plan Termination

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0127

Affected Public: Businesses or other for-profits

Respondents: 26,700

Responses: 1,308,000

Estimated Total Burden Hours: 47,700

Estimated Total Burden Cost (Operating and Maintenance): \$689,000

Description: The abandoned plan initiative includes the following actions, which impose the following information collections:

1. **Qualified Termination Administrator (QTA) Regulation:** The QTA regulation creates an orderly and efficient process by which a financial institution that holds the assets of a plan that is deemed to have been abandoned may undertake to terminate the plan and distribute its assets to participants and beneficiaries holding accounts under the plan, with protections and approval of the Department under the standards of the regulation. The regulation requires the QTA to provide certain notices to the Department, to participants and beneficiaries, and to the plan sponsor (or service providers to the plan, if necessary), and to keep certain records pertaining to the termination.
2. **Abandoned Plan Terminal Report Regulation:** The terminal report regulation provides an alternative, simplified method for a QTA to satisfy the annual report requirement otherwise applicable to a terminating plan by filing a special simplified terminal report with the Department after terminating an abandoned plan and distributing the remaining assets in the individual account plans to participants and beneficiaries.
3. **Terminated Plan Distribution Regulation:** The terminated plan distribution regulation establishes a safe harbor method by which fiduciaries who are terminating individual account pension plans (whether abandoned or not) may select an investment vehicle to receive account balances distributed from the terminated plan when the participant has failed to provide investment instructions. The regulation requires the fiduciaries

to provide advance notice to participants and beneficiaries of how such distributions will be invested, if no other investment instructions are provided.

4. **Abandoned Plan Class Exemption:** The exemption permits a QTA that terminates an abandoned plan under the QTA regulation to receive payment for its services from the abandoned plan and to distribute the account balance of a participant who has failed to provide investment direction into an individual retirement account (IRA) maintained by the QTA or an affiliate. Without the exemption, financial institutions would be unable to receive payment for services rendered out of plan assets without violating ERISA's prohibited transaction provisions and would therefore be highly unlikely to undertake the termination of abandoned plans. The exemption includes the condition that the QTA keep records of the distributions for a period of six years and make such records available on request to interested persons (including the Department and participants and beneficiaries). If a QTA wishes to be paid out of plan assets for services provided prior to becoming a QTA, the exemption requires that the QTA enter into a written agreement with a plan fiduciary or the plan sponsor prior to receiving payment and that a copy of the agreement be provided to the Department.
5. **PTE 2004-16 (Automatic Rollover Exemption):** Also included in this ICR are the notice and recordkeeping requirements contained in PTE 2004-16, which permits a pension plan fiduciary that is a financial institution and is also the employer maintaining an individual account pension plan for its employees to establish, on

behalf of its separated employees, an IRA at a financial institution that is either the employer or an affiliate, which IRA would receive mandatory distributions that the fiduciary “rolls over” from the plan when an employee terminates employment.

Because all of these regulations and exemptions relate to terminating or abandoned plans and/or to distribution and rollover of distributed benefits for which no participant investment election has been made, the Department has combined the paperwork burden for all of these actions into one ICR. In the Department's view, this combination allows the public to have a better understanding of the aggregate burden imposed on the public for these related regulatory actions. The ICR was approved by OMB under OMB Control Number 1210-0127 and is scheduled to expire on December 31, 2018.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Joseph Piacentini,
Director, Office of Policy and Research,
Employee Benefits Security Administration.

[Billing Code: 4510-29-P]

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